laminated polyurethane from [country D], stuffing them with foam and seving the sides closed. DJO places the pneumatic coupling on the fixture. DJO connects the tubing to the pneumatic coupling. DJO places the aircell on the fixture to assemble the side of pneumatic coupling in the aircell tubing. DJO then places the aircell and the elbow valve into the pneumatic fixtures to create an assembly, which is also placed into the wrap and connected to the tubing. The Airlift is then packaged into a box along with the hand bulb and instructional information, which is labeled for shipping.

You state that the Airlift is classified under subheading 9021.10.00, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Orthopedic appliances, including crutches, surgical belts and braces; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof; Orthopedic or fracture appliances, and parts and accessories thereof." 19 C.F.R. § 177.22(a).

ISSUE:

What is the country of origin of the Airlift for purposes of U.S. Government Procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.). Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B): An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. See also 19 C.F.R. § 177.22(a).

In determining whether the combining of parts constitutes a substantial transformation, the determinative issue for CBP is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. Belcrest Linens v. United States, 6 C.F.R. 204 (1963), aff’d, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See Headquarters Ruling Letter (“HQ”) H125975, dated January 19, 2011. CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis.

The Court of International Trade has also applied the “essence test” to determine whether the identity of an article is changed through assembly or processing. For example, in United Ind. v. United States, 3 C.I.T. 220, 225 (1982), aff’d, 702 F.2d 1022 (Fed. Cir. 1983), the court held that imported shoe uppers added to an outer sole in the United States were the “very essence of the finished shoe” and thus were not substantially transformed into a product of the United States. Further, the court noted that the attachment of the outsole to the upper was a minor manufacturing or combining process which left the identity of the upper intact.

Here, the manufacturing operations that combine the Airlift into a finished product are completed at DJO’s facility in Mexico and cause the various parts to lose their individual identities. In Mexico, DJO creates the tubing used to inflate the aircell, cuts the laminated polyurethane to size and shape for the aircell, fills the aircell with foam, and sews it closed. DJO then connects the tubing into the aircell using a coupler and plastic elbow, after which the aircell is sewn into the Airlift. This processing permanently attaches the various parts to each other so that they lose their individual identities and become part of the completed Airlift.

Further, similar to the shoe upper in Uniroyal, the aircell imparts the essence of the brace as it is the part that provides arch support to prevent or reduce adult onset flat foot, and supports the ankle to treat PTTD. While the form assembly is imported with lateral stays that work to immobilize the ankle, it is not until the insertion of the aircell that the Airlift is suitable for treatment of these conditions. Therefore, a customer is likely to make the decision to purchase the Airlift based on the function of the aircell. As such, we find that the manufacturing of the aircell in Mexico and additional processing to create a fully functioning brace results in a substantial transformation of the components such that the country of origin for government procurement purposes is Mexico.

HOLDING:

The country of origin of the Airlift for purposes of U.S. Government procurement is Mexico.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the determination and make such reexamination before the Court of International Trade. Sincerely, Alice A. Kipel, Executive Director Regulations & Rulings Office of Trade

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An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. See also 19 C.F.R. § 177.22(a).

A substantial transformation occurs when an article emerges from a process with a new name, character, and use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. See United States v. United States Distillers Corp., 27 C.C.P.A. 267 (1940); and National Juice Products Ass’n v. United States, 628 F. Supp. 978 (Ct. Int’l Trade 1986).

You claim that the country of origin is either the United States or Mexico for two reasons. First, you state that the source of crude is “an embargo issue for feedstock in the Solicitation.” Second, you claim there is no “double transformation” as in CBP Headquarters Ruling Letters (“HQ”) 555032, dated September 23, 1988 and HQ 562387, dated July 30, 2002, because the processes in those situations involved “old technology”/mixture-based processes that consisted of hydro-desulfurization, platforms and naphtha-blends. However, in this case, ANOI, Inc. proposes to refine, by the process of distillation, and additional processes, U.S. or Mexican origin, petroleum crude oil at the Reliance Petroleum Refinery in Jamnagar, India into U.S. JP5 specification jet fuel. You state that a “straight-run” process occurs because it uses a Merox filter unit that involves no chemical mixing except for inclusion of the JP5 additive, which is required by DLA. Accordingly, you claim no substantial transformation occurs in India. In this case, we find the JP5 specification jet fuel is clearly a new and different article with a new name, character, and use from that of the petroleum crude oil from which it was refined. Although there may be no double substantial transformation, the process to create jet fuel from straight crude oil to straight-run distillate still involves desalting and the application of heat distillation coupled with the utilization of the Merox Oxidation unit to remove sulfur, which results in the creation of jet fuel. According to our Laboratories and Scientific Services Directorate, the petroleum crude oil is substantially transformed into JP5 by the petroleum refining process of distillation. This finding is consistent with our decision in HQ 555032, where a first substantial transformation was found to occur after distillation. Therefore, we find the country of origin of the produced JP5 will be the country in which the substantial transformation (distillation) occurs, namely India.

HOLDING:

Based upon the specific facts of this case, the country of origin of the JP5 jet fuel for purposes of U.S. Government procurement will be India.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel,
Executive Director, Regulations and Rulings, Office of Trade.

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency


Alabama: Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Alabama (FEMA–3407–EM), dated October 12, 2018, and related determinations.

DATES: This amendment was issued November 7, 2018.


SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 13, 2018.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Coral Reef Grant Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.056, Disaster Grants—Public Assistance.